

1984 S.C. Op. Atty. Gen. 40 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-11, 1984 WL 159819

Office of the Attorney General

State of South Carolina

Opinion No. 84-11

February 1, 1984

\*1 The Honorable William W. Doar, Jr.  
Senator-District No. 16  
Room 404, Gressette Building  
Columbia, South Carolina 29202

Dear Senator Doar:

You have requested the opinion of this office on the question of whether it would be a violation of the dual office holding provisions of the South Carolina Constitution for a person to serve as Assistant City Recorder for the City of Georgetown and also serve as a member of the Georgetown County Election Commission. We understand that the individual in question is called 'Assistant City Recorder' but was appointed a part-time judge pursuant to Section 2 of the Georgetown City Ordinance discussed in this opinion, which section provides for the appointment of 'one or more full-time or part-time judges.' Hence, we will refer to the position in question as a part-time municipal judge.

[Article XVII, § 1A of the South Carolina Constitution](#) provides that '... no person shall hold two offices of honor or profit at the same time.' For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. [State v. Crenshaw](#), 274 S.C. 475, 266 S.E.2d 61 (1980).

This office has previously determined that a member of a county election commission does hold an office for the purposes of dual office holding. See, 1983 Op. Atty. Gen., dated September 24, 1983 (copy enclosed).

In determining whether a part-time municipal judge for the City of Georgetown would be an officer for dual office holding purposes, Chapter 25 of Title 14 of the Code of Laws of South Carolina (1983 Cum. Supp.) and an Ordinance of the City of Georgetown, dated December 18, 1980, titled 'An Ordinance to Provide for a Municipal Court for the City of Georgetown to Provide for the Election and Appointment to Municipal Judges, Ministerial Recorders and Court Personnel; and to Provide for the Administration and Operation of Such Court,' must be considered. The part-time municipal judge was appointed by City Council for a term fixed by City Council not to exceed four (4) years. See, Section 2 of the Ordinance; and also [Section 14-25-15 of the Code](#). Compensation is also provided for by Section 2 of the Ordinance. An oath is prescribed by [Section 14-25-15 of the Code](#). Qualifications for a municipal judge are specified by [Section 14-25-25 of the Code](#). Duties, powers, and jurisdictions of municipal courts are specified by [Section 14-25-45 of the Code](#), as follows:

Each municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established. The court shall also have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates. The court shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on municipal courts. The court shall have no jurisdiction in civil matters.

\*2 Undoubtedly, a municipal judge would exercise a portion of the sovereign powers of the State. Thus, a municipal judge would probably be considered an officer for the purposes of dual office holding.

The question is then whether a part-time municipal judge would constitute an office, as the powers and duties of that position would be exercised perhaps infrequently or intermittently. This office has recently examined that reasoning and opined that the nature of the duties and not the extent to which the duties are exercised should be the controlling factor. See, Opinion of the Attorney General dated December 16, 1983, which concurs with the conclusion reached in an Opinion dated February 22, 1982 (copies enclosed). The same reasoning would appear to apply to the position of part-time municipal judge for the City of Georgetown. Thus, the position of part-time municipal judge for the City of Georgetown would probably be considered an office for the purposes of dual office holding.

In conclusion, one who would occupy simultaneously positions as a member of Georgetown County Election Commission and part-time municipal judge for the City of Georgetown would probably contravene the dual office holding provisions of the Constitution of the State of South Carolina.

If we may assist you further with this matter, please feel free to contact us.

Sincerely,

Patricia D. Petway  
Staff Attorney

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